THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

W.P.Nos: 2606, 2681 and 2683 of 2007

Dated 20th July 2007

Between:

Sujatha Gupta W/o.Harish Chandra Gupta

…Petitioner

and

The Chairman & Managing Director,
Central Power Distribution Corporation of A.P. Limited,
Khairatabad, Hyderabad & others

…Respondents

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COMMON ORDER:

Smt.Nirmal Kumari was the owner of vast extent of property in Survey Nos.7/1, 7/2, 8/3 and 8/4 of Ramanthapur village. In 1978, she obtained permission to construct sheds therein, from the then Grampanchayat. Latter on, she leased the sheds to three lessees, viz., M/s.Swapna Ice Factory, M/s.Sheela Ice Factory and M/s.Meena Ice Factory (for short "the lessees"). Electric supply was obtained by the lessees themselves, being Service Connection Nos.0702-03645, 03564 & 04205, for the premises leased out to them.

Smt. Nirmala Kumari is said to have executed a will, dated 8.1.1998, bequeathing the property to the petitioners, who are her daughter-in law and husband. She died on 16.4.1998. Petitioners are said to have objected to the continuance of power supply to the lessees, on account of the fact that the consumption charges, to the tune of several lakhs of rupees, remained unpaid and several

conditions of lease were contravened. It is the case of the petitioners that the lessees vacated the premises without informing them, and in spite of the requests made by them, the respondents did not dismantle the power connections, for quite a long time.

Respondents 2 to 5 initiated steps for recovery of the arrears of consumption and other charges, in respect of the service connections referred to above. They have ultimately approached the District Collector, Ranga Reddy District, to initiate proceedings under the Revenue Recovery Act (for short "the Act"). In turn, the Mandal Revenue Officer, the 7th respondent, Uppal, issued notices of attachment, dated 8.2.2007, under the provisions of the Act, to the petitioners. The same are challenged in these three writ petitions.

Petitioners contend that they never obtained power supply from the respondents, and as such, cannot be compelled to pay the arrears of consumption charges. It is stated that neither Nirmal Kumari, nor the petitioners, are parties to the agreement between the tenants and the respondents, and in that view of the matter, no steps can be initiated against them, to recover the amount. Non-compliance with the provisions of the Act is also alleged.

On behalf of respondents 1 to 5, a counter affidavit is filed. It is stated that the owner of a premises answers the description of 'power consumer', and petitioners are equally liable to clear the arrears, as are their lessees. It is stated that the close relations of the petitioners are the partners of the so-called lessees, and
in spite of the best efforts put by them, the individuals are not being traced out. By referring to the relevant provisions of the terms and conditions of supply, the Electricity Dues Recovery Act and the

Revenue Recovery Act, it is urged that being the owners of the premises, the petitioners are liable to pay the arrears.

Sri C.V.Bhaskar Reddy, learned counsel for the petitioners, submits that respondents 1 to 5 remained as silent and inactive, when the lessees have committed default and have in fact extended the facility of instalments in payment of the arrears for some time. He contends that the proceedings under the Act can be initiated, only against the persons, who committed default, and when the petitioners are not the consumers of power supply, for the connections referred to above, there is no basis for the impugned notices. He further contends that the procedure prescribed under the Act was not followed, much less any adjudication into the arrears had taken place.

Sri O.Manohar Reddy, learned Standing Counsel for respondents 1 to 5, on the other hand, submits that by the time the petitioners are said to have succeeded the property, the leases were in subsistence, and the petitioners are equally liable to pay the arrears, since they answer the description of 'consumer'. He contends that when the notices were not issued in the name of the petitioners, they cannot maintain the writ petitions, and that it is open to the respondents, to proceed against the property, which was extended power supply, to recover the arrears of consumption charges.

The petitioners succeeded to the properties covered by a will executed by late Nirmal Kumari. By the time the testator died in 1998, the properties were under three separate leases. It is a matter of record that the power supply was extended, in the name of the lessees. The record discloses that the lessees alone were dealing with the erstwhile A.P. Electricity Board, and its successors, the respondents 1 to 5, in the matter of payment of arrears, grant of

instalments, etc. Neither the petitioners, nor their predecessor in title, were in picture, in relation to the grant, or disconnection of power supply.

The relationship between a licensee under the Electricity Act, 2003 and a consumer, is governed by the agreements executed between them. Apart from the conditions contained in the agreement, the provisions of the relevant statutes, as well as the Terms and Conditions of Supply, cover the field. The impugned notices are issued in the name of the consumers, i.e. the lessees of the petitioners. However, the actual steps are being taken against the petitioners.

If the petitioners, or their predecessor, were parties to the agreements with respondents 1 to 5, there would not have been any basis for the complaint of the petitioners. Admittedly, the petitioners are not parties to the said agreements. The matter, however, does not rest at that. If there exists any provisions of law, which render the petitioners also liable to pay the arrears, in respect of the service connections standing in the name of their lessees, they cannot escape from it.

On behalf of respondents, reliance is placed upon Section 2(15) of the Electricity Act, 2003, which defines the term 'consumer'. It reads as under:

> "consumer" means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity

with the works of a licensee, the Government or such other person, as the case may be".

Identical definition was contained in Electricity (Supply) Act, and the Terms and Conditions of Supply (clause 2.5).

From a reading of this, it is evident that wherever the power supply is extended to a lessee, apart from the concerned person, the owner of the person would also answer the description of 'consumer'. Though it is urged by the learned counsel for the petitioners that the lessor alone is to be treated as the "person whose premises are for the time being connected", as contemplated under the definition, this court is not inclined to agree with the same. A lessee would never become the owner of the immovable property and the lessor always continues to be the owner and holder of it.

Assuming that the petitioners answer the description 'consumer', they cannot be held liable to pay the arrears on that mere account. The definition only manifests the persons, that can be treated as consumers. Unless the person, who answers the description of consumer, enters into an agreement and binds himself to a set of legal consequences, he cannot be subjected to such conditions.

Had it been a case, where the respondents have roped in, the owner of the property also, in the agreement executed, while extending the power supply, it would certainly have been competent for them, to proceed against the petitioners. When no such step was taken, there does not exist any basis for the respondents, to proceed against the petitioners. It is a different thing that the premises cannot be extended the power supply, unless the arrears are cleared. However, the petitioners cannot be compelled to clear the arrears that accrued against their lessees.

For the foregoing reasons, the writ petitions are allowed, and the impugned notices are set aside, making it clear that it shall be open to the respondents, to proceed against the persons, in whose name the power connections were released, and that the premises shall not be extended power supply, unless the arrears are cleared. There shall be no order as to costs.

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(L.NARASIMHA REDDY, J)

Dt: 20th July 2007.

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